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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF APPEALS

Appellant: Robert James TRIBE et al. )  
Serial No: 09/920,728 )  
Filed: August 3, 2001 )  
For: SYRINGE PUMPS ) Appeal No.  
)  
)  
)

REQUEST REINSTATEMENT OF THE APPEAL

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

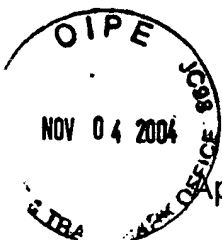
Appellants hereby request the reinstatement of the Appeal of the instant application. This Request is accompanied by the attached Supplemental Appeal Brief addressing the new ground of rejection raised in the Office Action dated August 16, 2004 that reopened the prosecution. As noted in the Supplemental Appeal Brief, the Appeal Brief filed on April 27, 2004 is incorporated by reference to the Supplemental Appeal Brief.

With the filing of the Supplemental Appeal Brief, it is respectfully requested that the appeal of this application be reinstated.

Respectfully submitted,

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Date: Nov 4 2004



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**APPELLANT'S SUPPLEMENTAL BRIEF ON EX PARTE APPEAL**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is a brief in support of the Request for reinstating the appeal of the final rejection of pending claims 1, 4, 5 and 7-10 relating to the above-identified application.

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## **PREFACE**

This Supplemental Appeal Brief is filed to Request Reinstatement of the Appeal in light of the reopening of the prosecution of the application by the examiner per the Office Action dated August 16, 2004.

Except as stated in particular hereinbelow, all sections of the Appeal Brief filed on April 27, 2004 (Appeal Brief) are incorporated by reference herein.

## **REAL PARTY IN INTEREST**

The statement under the Real Party In Interest section of the Appeal Brief is incorporated by reference herein.

## **RELATED APPEALS AND INTERFERENCES**

The statement in the Related Appeals and Interferences section of the Appeal Brief is incorporated by reference herein.

## **STATUS OF CLAIMS**

The Status of Claims set forth in the Appeal Brief is incorporated by referenced herein.

In addition, the prosecution of the instant case was reopened by the examiner in an Office Action dated August 16, 2004, in response to the submission of the Appeal Brief. In the Office Action, the examiner, relying on the same reference, shifted the rejection of dependent claims 4 and 8 on an anticipation ground under 35 U.S.C. 102(e) to an obviousness ground under 35 U.S.C. 103(a).

Per the filing of the Request to Reinstate the Appeal and the submission of the instant Supplemental Appeal Brief, the claims being on appeal remain claims 1, 4, 5 and 7-10, as reproduced in Appendix A of the Appeal Brief.

### **STATUS OF AMENDMENTS**

The statement in the Status of Amendments section of the Appeal Brief is incorporated by reference herein.

### **SUMMARY OF THE INVENTION**

The Summary of the Invention Section of the Appeal Brief is incorporated by reference in its entirety herein.

### **ISSUES**

In addition to the issue presented in the Appeal Brief, which is incorporated by reference herein, in light of the new ground of rejection by the examiner, a second issue being presented on appeal is therefore whether the 35 U.S.C. 103(a) rejection of the pending claims 4 and 8 over Moberg et al. U.S. patent 6,362,951 is sustainable?

### **GROUPING OF CLAIMS**

The Grouping of Claims section of the Appeal Brief is incorporated by reference herein.

In light of the new rejection by the examiner, Appellants respectfully request that in addition to each of the pending independent claims, claims 4 and 8 each should also be considered separately, as each of those claims is believed to be patentable over the prior art, per discussion hereinbelow.

### **ARGUMENT**

The Argument section of the Appeal Brief is incorporated by reference in its entirety herein.

Appellants now address the new issue raised by the examiner in the Office Action of August 16, 2004 whereby dependent claims 4 and 8 were rejected under 35 U.S.C. 103(a).

As stated in the Appeal Brief, Moberg '591 does not disclose any force sensor in a syringe pump. If anything, the objective of Moberg '591 is to eliminate the use of any force sensors. This is clearly evidenced by the discussion in the Background of the Invention in Moberg '591, as was pointed out in the Appeal Brief.

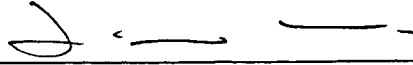
That being the case, the fact that claim 4 recites a force sensor, and the detection of 10% of the force by the force sensor, clearly renders claim 4 not obvious over Moberg '591, for there is no disclosure of any force sensor or, as recognized by the examiner, of any level of force to be detected by the force sensor disclosed by Moberg '591. Moberg '591 actually teaches eliminating the use of such force sensors. Accordingly, it is apparent that, with Moberg '591 in hand, a person of skill in the art at the time that the instant invention was conceived could not have considered as obvious the reversing of the drive of the syringe pump until the force detected by the force sensor is substantially 10% of the force at which an occlusion is detected. As there is no force sensor disclosed in any of the embodiments of the Moberg '591 device, the percentage of force at which the drive stops reversing the pump clearly could not have been envisioned by the skilled artisan.

The same argument above is equally applicable to claim 8, which depends from claim 7, for Moberg '591 fails to disclose or suggest the driving of the plunger to a percentage of a predetermined value.

In view of the foregoing, Appellants respectfully submit that claims 4 and 8 each are separately patentable over the prior art.

With the filing of the instant Supplemental Appeal Brief, the Board of Appeals and Interferences is respectfully requested to consider this appeal and reverse the rejection of the being appealed claims.

Respectfully submitted,



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